

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF NEW YORK and NEW YORK  
DEPARTMENT OF SANITATION,

Defendants.

99 Civ. 2207 (LAK) (RLE)

**STIPULATION AND ORDER  
MODIFYING CONSENT DECREE**

WHEREAS, plaintiff the United States of America (the "United States"), on behalf of the United States Environmental Protection Agency ("EPA"), filed the Complaint herein on March 24, 1999, against defendants the City of New York (the "City") and the New York City Department of Sanitation ("DOS") (collectively, the "City"); and

WHEREAS, the Complaint alleged that the City had violated Section 608 of the Clean Air Act (the "Act"), 42 U.S.C. § 7671g, and the regulations promulgated pursuant to Section 608 that are set forth at 40 C.F.R. Part 82, Subpart F, by disposing of appliances collected from City residents in a manner that released substances that deplete the stratospheric ozone layer; and

WHEREAS, the Complaint also alleged that these actions violated a Compliance Order issued to DOS by EPA on December 29, 1993 (the "Compliance Order"); and

WHEREAS, the City denied liability for any violation of the Clean Air Act and the regulations promulgated thereunder, and for any violation of the Compliance Order; and

WHEREAS, the United States and the City agreed to entry of a Consent Decree resolving this matter, which was entered by the Court on August 9, 2000 (the "Consent Decree");

and

WHEREAS, the Consent Decree, which is attached hereto as Exhibit A, required that the City, inter alia, perform various Supplemental Environmental Projects ("SEPs"), of which the City completed SEP Number 2 and SEP Number 4 only; and

WHEREAS, the City represents that the City cannot complete SEP Number 3(a) and three of the four compressed natural gas ("CNG") fueling stations for light duty vehicles required by SEP Number 3(c); and

WHEREAS, the City has not completed SEPs 1, 3(b), and the remaining CNG station for light duty vehicles required by SEP Number 3(c) in the time period specified in the Consent Decree and has requested an extension of the time to perform these SEPs; and

WHEREAS, the United States and the City agree to modify the Consent Decree to provide a substitute SEP for those SEPs not performed and to provide new deadlines for completion of the incomplete SEPs, and further agree that entry of this Stipulation and Order Modifying the Consent Decree without further litigation is the most appropriate means of resolving the City's potential liability for unperformed and late SEPs and that this Stipulation and Order is fair, reasonable, and in the public interest;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that:

1. Paragraph 8 of the Consent Decree (SEP Number 1) is modified to provide that the City shall fully complete construction and installation of, and commence use of, the DOS CNG fueling station in Woodside, Queens by May 30, 2007.

2. Paragraph 10(b) of the Consent Decree (SEP Number 3(b)) is modified to

provide that the City shall fully complete construction and installation of, and commence use of, the Department of Transportation CNG fueling station in Corona, Queens by May 30, 2007.

3. Paragraph 10(c) of the Consent Decree (SEP Number 3(c)) is modified to provide that the City shall fully complete construction and installation of, and commence use of, the CNG fueling station located at the 86<sup>th</sup> Street Transverse Station in Manhattan by May 30, 2007. The balance of paragraph 10(c) is deleted.

4. A new paragraph 10(d) is added to the Consent Decree, which provides that the City shall perform a substitute SEP ("Substitute SEP") as follows:

The City shall plant at least 420 trees, at an estimated cost of \$1,500 per tree at sidewalk locations or in parks, in the following five neighborhoods: Morrisania, Bronx Community District 3; East New York, Brooklyn Community District 5; East Harlem, Manhattan Community District 11; Far Rockaway, Queens Community District 14; and Stapleton, Staten Island Community District 1. The New York City Department of Parks and Recreation ("Parks") shall perform this Substitute SEP in two phases as specified in subparagraphs (a) and (b) of this paragraph. Completion of the Substitute SEP as specified in subparagraphs (a) and (b) shall cost no less than \$610,000 and must be completed by December 31, 2008. The tree species appropriate for each sidewalk or park location shall be selected from the Parks list of tree species approved for planting in the City, "Street Trees for New York City," and be 2.5 caliper and 8 feet in height or greater at the time of planting.

(a) Phase 1: The City shall plant approximately 240 trees at a projected cost of

\$360,000 in Morrisania, Bronx Community District 3; East New York, Brooklyn Community District 5; East Harlem, Manhattan Community District 11. The tree planting shall commence on or about April 1, 2007, and shall be fully completed by June 30, 2007.

(b) Phase 2: The City shall plant approximately 180 trees at a projected cost of \$250,000 in Far Rockaway, Queens Community District 14; and Stapleton, Staten Island Community District 1. The tree planting at these locations shall commence on or about April 1, 2008, and all Phase 2 tree planting shall be fully completed by June 30, 2008.

(c) The City shall ensure that all trees planted in accordance with the Substitute SEP, set forth in subparagraphs (a) and (b) above, shall be maintained for a period of at least five (5) years from completion of the Substitute SEP. In the event that any tree dies during the five-year period, the City shall replace it within the next fall or spring planting season. Costs for maintaining and replacement of trees shall be additional to the \$610,000 to be expended on the Substitute SEP.

5. The City hereby certifies that (i) all cost information provided to EPA in connection with EPA's approval of the Substitute SEP is complete and accurate and represents a fair estimate of the costs necessary to implement the Substitute SEP; (ii) as of the date of executing this Order, the City is not required to perform activities provided for in the Substitute SEP or develop a SEP which includes performance of such activities by any federal, state, or local law or regulation and is not required to perform or develop such a SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum; (iii) the Substitute SEP is not a project

that the City was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree; (iv) the City has not received, and is not negotiating to receive, credit for the Substitute SEP in any other enforcement action; and (v) the City shall not receive any reimbursement for any portion of the Substitute SEP from any other person.

6. Any public statement, oral or written, in print, film, or other media, made by the City that makes reference to the Substitute SEP shall include the following language: "This project was undertaken as part of the settlement of a lawsuit brought against the City and the New York City Department of Sanitation by the United States for violations of the Clean Air Act."

7. Paragraph 15(a) of the Consent Decree (Periodic SEP Progress Reports) is modified to provide as follows:

(a) Every three months from the date of entry of this Stipulation and Order, the City shall submit to EPA a report on the progress of the construction and installation of the CNG fueling stations required under SEP Numbers 1, 3(b), and 3(c), including the specific components that are not yet complete. Each progress report shall contain the following information: (i) the City's progress regarding meeting the schedule set forth in this Stipulation and Order, and, if the City is not meeting the schedule, the extent and cause(s) of delay, and when the City expects the work to be completed; and (ii) a statement of the costs that have been incurred in connection with the SEPs during the period covered by the report.

(b) The City shall submit a status report for Phase 1 of the Substitute SEP by July 31, 2007, and for Phase 2 of the Substitute SEP by July 31, 2008. The status

reports shall identify all the locations of the trees planted, the species of trees planted, the size (caliper and height) of each tree planted and itemizations of the costs incurred. If a status report submitted by the City does not document completion of either Phase 1 or Phase 2 of the SEP, the City shall submit status reports monthly thereafter until completion of the required substitute SEP phase is documented. Any monthly status report shall include the date the City expects to complete the SEP. The report shall identify all the locations of the trees planted, the species of trees planted, the size (caliper and height) of each tree planted and itemizations of the costs incurred.

(c) After completion of Phase 1 and 2 of the Substitute SEP, until termination of the five-year period specified in subparagraph 4(c) above, the City shall submit a summary report annually on or before July 31, consisting of the City's annual survey of trees planted in Phase 1 and 2, and of all replacement trees, and identifying all the locations of trees planted, including those previously included in the Phase 1 and 2 SEP status reports, the species of trees planted, and itemizations of the costs incurred.

8. Paragraph 17 of the Consent Decree is modified to provide that written notice be provided to the following persons:

To the United States for all notices, reports, statements and other documents:

Evans Stamataky  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway

New York, New York 10007

Beth E. Goldman  
Assistant United States Attorney  
United States Attorney's Office  
86 Chambers Street, 3<sup>rd</sup> Floor  
New York, New York 10007

To the City of New York for all notices, reports, statements and other documents:

Gail Saunders  
Assistant Corporation Counsel  
100 Church Street  
New York, New York 10007

Robert Orlin  
Deputy Commissioner Legal Affairs  
New York City Department of Sanitation  
125 Worth Street, Room 710  
New York, New York 10013

To the New York City Department of Transportation, for all notices, reports, statements  
and other documents:

Mark Simon  
Alternate Fuel Programs  
New York City Department of Transportation  
40 Worth Street, Room 828  
New York, New York 10013

9. Paragraph 22 of the Consent Decree (Stipulated Penalties) is modified to provide  
that the City shall be liable for stipulated penalties as set forth below:

(a) For failure to timely submit a complete SEP progress report, summary report  
or completion statement, the City shall pay a stipulated penalty to the United States in the amount  
of \$500.00 per day until submission of the SEP progress report, summary report or completion

statement.

(b) For a SEP, other than the Substitute SEP, which is not completed by the completion date set forth herein, the City shall pay a stipulated penalty to the United States in the amount of \$500.00 per day until the completion date.

(c) In the event that the City does not expend at least the \$610,000 agreed upon to complete the Substitute SEP by December 31, 2008, the City shall pay a stipulated penalty to the United States as follows:

(i) In the event that less than 75% of the required \$610,000 is expended on the Substitute SEP described in paragraph 4 above, the City shall pay a stipulated penalty equal to the difference between the total eligible SEP costs incurred by the City and an additional penalty equal to 50% of the unexpended amount; (ii) In the event that 75-98% of the required \$610,000 is expended on the Substitute SEP described in paragraph 4 above, the City shall pay a stipulated penalty equal to the difference between the total eligible SEP costs incurred by the City and an additional penalty equal to 25% of the unexpended amount; (iii) In the event that the City expends 98% of the required \$610,000 for the SEP described in paragraph 4 above, the City shall pay the difference between the total eligible SEP costs incurred by the City and the required \$610,000. Eligible costs consist of the cost for the trees, the planting vault and associated soil, and the labor costs associated with creating the planting vault and planting the trees.

(d) In the event the City does not replace a tree as required by subparagraph 4(c) above, the City shall replace any such tree in the following fall or spring planting season. In the event that the City does not replace any such tree in the following fall or spring planting season, the City shall pay a stipulated penalty of \$500 for each tree not timely replaced, plus replace the



(e) Penalties under this subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier.

11. This Stipulation and Order may be executed by the parties in counterparts.

SO ORDERED:

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CONSENTED TO:

FOR PLAINTIFF UNITED STATES OF AMERICA

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
Attorney for Plaintiff

By:

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BETH E. GOLDMAN  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, NY 10007  
Telephone: (212) 637-2732

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ELLEN MAHAN

Deputy Section Chief

Environmental Enforcement Section

Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

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ERIC SCHAAF  
Regional Counsel  
United States Environmental Protection  
Agency, Region 2  
290 Broadway  
New York, New York 10007

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EVANS STAMATAKY  
Assistant Regional Counsel  
United States Environmental Protection  
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290 Broadway  
New York, New York 10007  
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FOR DEFENDANTS

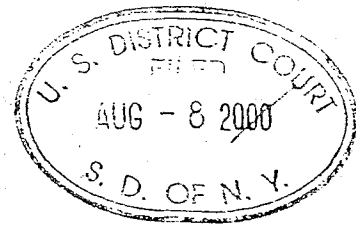
MICHAEL CARDOZO  
Corporation Counsel for the  
City of New York  
Attorney for Defendants

By:

GAIL C. SAUNDERS  
Assistant Corporation Counsel  
100 Church Street  
New York, NY 10007  
Tel. No. (212) 788-1238



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

CONSENT DECREE

-against-

99 Civ. 2207 (LAK)

CITY OF NEW YORK and NEW YORK CITY  
DEPARTMENT OF SANITATION,

Defendants.

WHEREAS, plaintiff the United States of America (the "United States"), on behalf of the United States Environmental Protection Agency ("EPA") filed the Complaint herein on March 24, 1999 against defendants the City of New York (the "City") and the New York City Department of Sanitation ("DOS") (collectively the "City"), and

WHEREAS, the Complaint alleges that the City has violated Section 608 of the Clean Air Act (the "Act"), 42 U.S.C. § 7671g, and the regulations promulgated pursuant to Section 608 that are set forth at 40 C.F.R. Part 82, Subpart F, by disposing of appliances collected from City residents in a manner that released substances that deplete the stratospheric ozone layer; and

WHEREAS, the Complaint also alleges that these actions violated a Compliance Order issued to DOS by EPA on December 29, 1993 (the "Compliance Order"); and

WHEREAS, the City denies liability for any violation of the Clean Air Act and the regulations promulgated thereunder, and for any violation of the Compliance Order, and has interposed answers denying all of the material allegations made by the United States, and enters into this Consent Decree prior to trial without admitting any issue of fact or law; and

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WHEREAS, the United States and the City agree that entry of this Consent Decree without further litigation is the most appropriate means of resolving this matter and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

**I. JURISDICTION AND VENUE**

1. This court has jurisdiction over the subject matter of this action pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and pursuant to 28 U.S.C. §§ 1331 and 1345.

2. Venue is proper in this District pursuant to Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. § 1391(b).

**II. BINDING EFFECT**

3. This Consent Decree shall apply to and be binding upon the parties, their officers, directors, servants, employees, agents, successors and assigns.

**III. CIVIL PENALTY**

4. Within 30 days of the date of entry of this Consent Decree, the City shall pay to the United States a civil penalty in the amount of \$1,000,000 (one million dollars) by electronic transfer pursuant to instructions to be provided to counsel for the City by the United States Attorney's Office for the Southern District of New York. The City shall provide notice to the United States Attorney's Office for the Southern District of New York (to the attention of AUSA Heidi A. Wendel) of the electronic transfer within 2 days of the date on which it is made.

5. The City shall pay interest at the rate set forth in 28 U.S.C. § 1961 on any portion of the civil penalty set forth in paragraph 4 above that is not paid within 30 days of the date of entry of this Consent Decree.



#### IV. DISPOSAL OF APPLIANCES

6. The City shall comply at all times with Section 608 of the Clean Air Act, and the regulations set forth at 40 C.F.R. Part 82, Subpart F (the "Safe Disposal Regulations").

#### V. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

7. The City shall perform the Supplemental Environmental Projects ("SEPs") set forth in paragraphs 8 through 12 below.

8. SEP Number 1: The City shall construct and install a compressed natural gas ("CNG") fueling station for the DOS Central Repair Shop at 52-35 58<sup>th</sup> Street, Woodside, Queens, 11377, which shall be capable of fueling heavy-duty trucks. The DOS CNG fueling station shall be capable of compressing approximately 600 standard cubic feet per minute. The City expects to incur costs of \$1,250,000 (one million, two hundred and fifty thousand dollars) to construct and install the DOS CNG fueling station in Woodside. The City shall fully complete construction and installation of and commence using the DOS CNG fueling station in Woodside within 30 months of the date of entry of this Consent Decree.

9. SEP Number 2: The City shall purchase 9 heavy-duty trucks for DOS's fleet that use CNG instead of diesel fuel. The City shall use only CNG fuel in these trucks. The City shall purchase these 9 CNG trucks in addition to any CNG vehicles it is already obligated to purchase at the time of entry of this Consent Decree. The City expects to incur total costs of \$570,000 (five hundred and seventy thousand dollars) as the incremental cost of purchasing 9 trucks that use CNG instead of diesel fuel. The City shall purchase 9 CNG trucks within 15 months of the date of entry of this Consent Decree.

10. SEP Number 3: The City shall construct and install CNG fueling stations for the City's light-duty natural gas or bi-fuel natural gas vehicles as set forth in paragraphs 10(a), (b), and (c) below.

(a) The City shall construct and install a CNG fueling station for light-duty vehicles at the headquarters of the New York City Department of Environmental Protection ("DEP") at 59-17 Junction Blvd., in Corona, Queens, 11568. The DEP CNG fueling station shall be capable of compressing approximately 80 standard cubic feet per minute. The City expects to incur costs of \$250,000 (two hundred and fifty thousand dollars) to construct and install the DEP CNG fueling station in Corona, Queens. The City shall construct, install, and commence using the station within 24 months of the date of entry of this Consent Decree.

(b) The City shall construct and install a CNG fueling station for light-duty vehicles at the headquarters of the New York City Department of Transportation ("DOT") at the Harper Street Facility at 32-11 Harper St. in Corona, Queens, 11378. The DOT CNG fueling station shall be capable of compressing approximately 40 standard cubic feet per minute. The City expects to incur costs of \$150,000 (one hundred and fifty thousand dollars) to construct and install the DOT CNG fueling station at the Harper Street Facility. The City shall construct, install, and commence using the station within 24 months of the date of entry of this Consent Decree.

(c) The City shall construct, install and commence using 4 additional CNG fueling stations for light duty vehicles at various sites in the City within 24 months of EPA approval of the site locations. The City shall propose to EPA in writing specific sites for these stations within 60 days of the date of entry of this Consent Decree. EPA shall advise the City within 60 days of its acceptance or rejection of the proposed sites. If EPA rejects any proposed site, the City shall propose an alternative site to EPA in writing within 30 days of the date on which EPA informs the City that it has rejected the City's proposed site. The United States and the City will attempt to resolve any dispute that arises regarding the location of a CNG fueling

station in accordance with Section VIII of this Consent Decree. At least 1 of the stations provided for by this subparagraph shall be located in Manhattan and at least 1 shall be located in the Bronx. The City expects to incur costs of \$120,000 (one hundred and twenty thousand dollars) on average to construct and install each of the stations provided for by this subparagraph. Accordingly, the City expects to incur total costs of \$480,000 (four hundred and eighty thousand dollars) to construct and install the 4 CNG fueling stations provided for in this subparagraph.

11. SEP Number 4: The City shall conduct 2 pilot programs to evaluate the efficacy of 2 different technologies that have the potential to significantly reduce the emission of pollutants from heavy-duty City trucks as described in subparagraphs 11(a) and (b) below. Prior to conducting the pilot programs, the City shall submit a proposed plan for the performance of each of the pilot programs to EPA for review and approval.

(a) The City will test the efficacy of the use of a continuously regenerating trap ("CRT") with sulfur fuel in DOS and DOT trucks to reduce emissions of pollutants from heavy-duty trucks. The City expects to incur total costs of \$60,000 (sixty thousand dollars) to conduct the pilot program using the CRT with low sulfur fuel. This cost includes the purchase of 10 CRTs at a cost of \$6,000 each. The City shall complete this pilot program within 30 months of the date of entry of the Consent Decree.

(b) The City shall test the efficacy of the use of a catalytic trap system ("CTS") with conventional fuel to reduce the emissions of pollutants from heavy-duty City trucks. The City shall acquire 40 CTS units for evaluation on DOS and DOT trucks. The City expects to incur a total cost of \$240,000 (two hundred and forty thousand dollars) for this pilot. The City shall complete the pilot program within 30 months of the date of entry of the Consent Decree.

(c) Within 60 days from the date on which the City completes each pilot program, the City shall submit a draft report containing the results of the pilot program to the EPA for review and approval. The City shall incorporate EPA's comments into the final report for submission to EPA. The City shall permit EPA to publish the final reports on the pilot programs or to make any other use whatsoever of these reports, provided that appropriate credit is given to the City. The final reports shall contain the certification required by paragraph 21 below and shall contain all data relating to the pilot programs.

12. SEP Number 5: In the event that the City completes SEPs number 1 through 4 set forth in paragraphs 8 through 11 above for less than a total cost of \$3 million (three million dollars), the City shall construct and install additional CNG fueling stations for light-duty vehicles at various sites in the City. Within 60 days from the date the City believes that SEPs 1 through 4 will be completed for less than \$3 million, but in no event later than 60 days from the time the City completes SEPs 1 through 4, the City shall propose to EPA in writing specific sites for any stations to be constructed and installed pursuant to this subparagraph. EPA shall advise the City within 60 days of its acceptance or rejection of any proposed site. If EPA rejects any proposed site, the City shall propose an alternative site to EPA in writing within 30 days of the date on which EPA informs the City that it has rejected the City's proposed site. Any dispute that arises regarding the location of a CNG fueling station to be constructed pursuant to this subparagraph shall be governed by Section VIII of this Consent Decree. Any stations approved by the EPA shall be constructed and installed by the City within 24 months of EPA approval.

13. The City shall perform SEPs number 1 through 4 set forth in paragraphs 8 through 11 above even if the total cost of those SEPs is greater than \$3 million (three million dollars).

14. The City hereby certifies that the City is not required to perform or develop the SEPs set forth in paragraphs 8 through 12 above by any federal, state or local law or regulation. The City also hereby certifies that it is not required to perform or develop any of the SEPs by agreement, order or grant. In addition, the City hereby certifies that it has not received, and is not negotiating to receive, credit in any other enforcement action for any of the SEPs set forth in paragraphs 8 through 12 above.

15. Periodic SEP Progress Reports:

(a) Within 60 days of the date of entry of this Consent Decree, the City shall submit to EPA a schedule for the construction and installation of each of the CNG fueling stations provided for in paragraphs 8 and 10 above, except subparagraph 10(c). With respect to the CNG fueling stations provided for in subparagraph 10(c), the City shall submit to EPA a schedule for the construction and installation of each station within 90 days of the date of EPA approval of the CNG fueling station site location. The schedule submitted by the City regarding construction and installation of each station provided for in paragraphs 8 and 10 above shall cover the entire period of construction and installation through completion of the station. Every 6 months from the date of entry of this Consent Decree, the City shall submit to EPA a report on the progress of the construction and installation of each station provided for in paragraphs 8 and 10 above. The progress report shall contain the following information: 1) whether the City is meeting the schedule submitted by the City pursuant to this subparagraph, and if the City is not meeting the schedule, the extent and cause or causes of the delay, and when the City expects the station to be completed; and 2) a statement of the costs that have been incurred in constructing and installing the station during the period covered by the report.

(b) The City shall also submit progress reports every 6 months from the date of entry of this Consent Decree regarding each of the pilot programs provided for in paragraph 11 above. These progress reports shall contain the following information: 1) whether the City is performing the pilot program in conformance with the plan approved by EPA, and if not, the extent and cause or causes of any failure to conform to the plan; and 2) a statement of the costs that have been incurred in conducting the pilot program during the period covered by the report.

16. SEP Completion Statements: Within 30 days of completion of each SEP set forth in paragraphs 8, 9, 10, 11, and 12, above, the City shall submit a statement to EPA stating: (i) that the SEP has been fully constructed and installed or performed as required by paragraphs 8, 9, 10, 11, and 12 above; and (ii) the costs incurred by the City in connection with the construction and installation or the performance of the SEP. The statement shall contain the certification required by paragraph 21 below.

17. Whenever, under the terms of this Consent Decree, written notice is required to be given or a statement, report or other document is required to be sent, it shall be directed to the individuals at the addresses specified below. The United States or the City may change the person(s) designated or address by written notice to all the other designated recipients.

To the United States for all notices, reports, statements and other documents:

Amy Chester  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region II  
290 Broadway  
New York, New York 10007



Heidi A. Wendel  
Assistant United States Attorney  
United States Attorney's Office  
100 Church Street, 19th floor  
New York, New York 10007

To the City of New York for all notices, reports, statements, and other documents:

Inga Van Eysden  
Assistant Corporation Counsel  
100 Church Street, Room 3-124  
New York, New York 10007

Anne Marie Santangelo  
Assistant Commissioner for Legal Affairs  
New York City Department of Sanitation  
125 Worth Street, Room 710  
New York, New York 10013

To the City of New York for notices, reports, statements and other documents related to SEPs 3, 4 and 5 only:

Mark Simon  
Alternate Fuel Programs  
New York City Department of Transportation  
40 Worth Street, Room 828  
New York, New York 10013

18. EPA's right to inspect or have access to any facility, including any facility or station constructed pursuant to this Consent Decree, is defined by statute and/or regulation.

19. The City agrees to continuously use or operate the CNG fueling stations it is required to construct and install as part of the SEPs set forth above for a period of not less than 5 years subsequent to the completion of construction and installation.

20. For a period of six months after completing the construction of CNG fueling stations pursuant to paragraphs 8, 10, and 12, purchasing CNG heavy-duty trucks pursuant to paragraph 9, and completing the pilot program pursuant to paragraph 11, the City shall maintain legible copies of documentation of the underlying cost and other data for any statements or reports submitted to EPA pursuant to this Consent Decree, and the City shall

provide the documentation of any such underlying data to EPA within 10 business days of any request for such information.

21. All periodic SEP reports and SEP completion statements submitted by the City shall contain the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete.

#### VI. STIPULATED PENALTIES

22. The City shall be liable for stipulated penalties as set forth below.

(a) For failure to timely submit a SEP progress report or completion statement as required by paragraphs 15 and 16, the City shall pay a stipulated penalty to the United States in the amount of \$500.00 per day until submission of the SEP progress report or completion statement.

(b) For a SEP which is not completed in accordance with the provisions of the Consent Decree by the final completion date, the City shall pay a stipulated penalty to the United States in the amount of \$500.00 per day until the completion date.

(c) In the event that the total cost of performing SEPs number 1 through 5 does not equal or exceed \$3 million (three million dollars) and the unexpended balance is insufficient to fund the construction and installation of a CNG fueling station pursuant to SEP number 5, the City shall use the unexpended balance toward the purchase of CNG vehicles not otherwise required by law, agreement, order or grant to be purchased, or the City shall pay the unexpended balance to the United States as a stipulated penalty.



23. Stipulated penalties shall automatically begin to accrue on the day that performance is due or the non-compliance occurs, and shall continue to accrue through the day that performance is completed or the non-compliance ceases.

24. Stipulated penalties from the date of accrual shall be paid upon demand by the United States on or before the thirtieth day following the demand and shall become due and payable monthly thereafter. In the event payment is not made on the thirtieth day following demand or, for succeeding payments, payment is untimely, interest shall be paid from the date of accrual, at the rate provided for by 28 U.S.C. § 1961. Penalties shall be made by electronic transfer pursuant to instructions to be provided by the United States Attorney's Office for the Southern District of New York.

25. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of the City's violation of this Consent Decree or of the statutes and regulations upon which this Consent Decree is based, or for the City's violation of any applicable provision of the law.

## **VII. FORCE MAJEURE**

26. If any unforeseeable event occurs which causes or may cause a delay in the performance of any obligations of the City under this Consent Decree, the City shall notify the United States in writing as soon as reasonably practicable, but in any event within 21 business days from the date the City first knew or should have known of the event by the exercise of due diligence. The notice shall describe in detail the cause of the delay, the anticipated length of the delay, and the measures taken by the City to prevent or minimize the delay. The City shall adopt all reasonable measures to avoid and minimize such delays. Failure

to comply with the above notice requirements shall result in the City being unable to rely on this force majeure provision of this Consent Decree.

27. The United States shall notify the City in writing of its agreement or disagreement with the City's claim of unavoidable delay within 30 days of receipt of the notice provided under paragraph 26 above. If the United States agrees that the delay is attributable to a force majeure event, the time for performance of such obligation shall be extended for a period not to exceed the actual delay resulting from such event. The City shall not be liable for stipulated penalties for the period of such delay if the United States agrees that the event constitutes a force majeure event.

28. If the United States does not agree with the City's claim of a delay, the City may submit the matter to the Court for resolution pursuant to the dispute resolution procedures established by Section VIII of this Consent Decree within 30 days of the City's receipt of the United States' determination regarding the force majeure event. If the City submits the matter to the Court for resolution, the City shall have the burden of proving that the event is a force majeure event, that the City took all reasonable efforts to prevent or minimize the delay, and the duration of the delay attributable to the force majeure event. If the Court determines that the delay was caused by a force majeure event, the delay shall be excused (including stipulated penalties).

29. Unanticipated or increased costs or expenses associated with the performance of the City's obligations under this Consent Decree shall not constitute a force majeure event. The City's inability to obtain necessary state permits or approvals in a timely fashion shall constitute a force majeure event only when, in accordance with all applicable laws and regulations, the City has timely submitted a complete application, all necessary supporting

information, and any other information requested, and is otherwise entitled to such permit or approval.

30. If any force majeure event causes a delay of 6 months or more in the completion of any CNG refueling station the City is required to construct and install under this Consent Decree, the City must construct and install a CNG fueling station with the same capacity as the delayed station at an alternative site. Within 60 days of the date the City believes that the construction or installation of a station may be delayed 6 months or more by a force majeure event, but in no event later than 60 days after the construction or installation of a station has been delayed 6 months due to a force majeure event, the City shall propose to EPA in writing an alternative site for the station. EPA shall advise the City within 60 days of its acceptance or rejection of any such proposed site. If EPA rejects any proposed site, the City shall propose an alternative site to EPA in writing within 30 days of the date on which EPA informs the City that it has rejected the City's proposed site. Any disputes regarding the location of a CNG fueling station to be constructed and installed pursuant to this paragraph shall be governed by Section VIII of this Consent Decree. Any station approved by EPA pursuant to this paragraph shall be constructed and installed within 24 months of EPA approval.

#### **VIII. DISPUTE RESOLUTION**

31. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of paragraphs 31 through 34 shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree.

32. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties. The dispute

shall be considered to have arisen when either party receives written notice of a dispute from the other party.

33. If the dispute is not resolved within forty-five (45) days, any party may apply to the Court. The other party shall have thirty (30) days to file a response. The parties may agree in writing to extend the 45-day period for informal resolution of a dispute.

34. The invocation of formal dispute resolution procedures under paragraphs 31 through 34 shall not extend, postpone, or affect any obligation of the City under this Consent Decree not directly in dispute, unless the United States agrees or the Court directs otherwise.

#### **IX. COSTS AND ATTORNEY'S FEES**

35. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this Consent Decree.

#### **X. PUBLIC STATEMENTS**

36. Any public statement, oral or written, in print, film, or other media, made by the City that makes reference to any SEP set forth in paragraphs 8 through 12 above shall include the following language: "This project was undertaken as part of the settlement of a lawsuit brought against the City and the New York City Department of Sanitation by the United States for violations of the Clean Air Act."

#### **XI. EFFECT OF THIS CONSENT DECREE AND RESERVATION OF RIGHTS**

37. Subject to full compliance with the terms of this Consent Decree, the United States, on behalf of itself and its agencies, will release and discharge the City from any civil or administrative claims the United States and its agencies have or may have for the allegations set forth in the complaint.

38. This Consent Decree shall not relieve the City of its obligation to comply with all applicable provisions of federal, state or local law, nor shall it be construed to be a ruling

on, or determination of, any issue related to any federal, state or local permit, nor shall it be construed to constitute approval by the United States or EPA of the equipment or technology installed by the City in connection with the SEPs under the terms of this Consent Decree.

39. This Consent Decree constitutes a settlement by the United States of all claims for civil penalties for the violations alleged in the Complaint. Nothing in this Consent Decree is intended to or shall be construed to operate in any way to resolve any criminal liability of the City.

40. The City is entering into this Consent Decree without acknowledging any fault, liability, or wrongdoing of any kind. Neither this Consent Decree, nor any of its terms and provisions (including "whereas clauses"), nor any of the negotiations or proceedings connected to it, shall be construed as an admission of the truth of any of the assertions of the United States, or of liability, fault, or wrongdoing of any kind whatsoever.

## **XII. PUBLIC COMMENT**

41. The parties agree and acknowledge that final approval by the United States and entry of this Consent Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. The United States reserves the right to withdraw its consent to this Consent Decree should any public comment reveal facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. If this Consent Decree is not changed as a result of public comment, the City shall consent to entry of the Consent Decree without further notice, and may not withdraw from this Consent Decree once signed by its authorized representative.

### XIII. MODIFICATION

42. This Consent Decree may be modified only with the written consent of the parties and approval of the Court, or by order of the Court. Nothing herein shall be construed to limit any party's rights pursuant to Rule 60(b) of the Federal Rules of Civil Procedure.

### XIV. RETENTION OF JURISDICTION

43. This Consent Decree will take effect on the date it is entered by the Court.

44. The Court will retain jurisdiction to enforce the terms of this Consent Decree and to resolve any disputes arising hereunder until the Consent Decree has been terminated.

45. Unless there is an application or proceeding then pending pursuant to the dispute resolution provisions of this Consent Decree, this Consent Decree shall be terminated 5 years after the date of the Court's entry of this Consent Decree, or 5 years after the date of completion of all SEPs, whichever is later.


### XV. AUTHORITY TO SIGN

46. Each undersigned representative of the parties to this Consent Decree certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Consent Decree and to execute and legally bind that party to it.

47. This Consent Decree may be executed by the parties in counterparts.

SO ORDERED: /

UNITED STATES DISTRICT JUDGE

*August 7, 14 2000*   
DATED

CONSENTED TO BY:

MICHAEL D. HESS  
Corporation Counsel for the  
City of New York  
Attorney for the Defendants

By:

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